

**STATE LEVEL AGREEMENT  
BETWEEN  
THE UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE  
AND  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE**

This State Level Agreement (SLA) implements Stipulation 2.A. (STATE LEVEL AGREEMENTS) of the Programmatic Agreement among the United States Department of Agriculture Natural Resources Conservation Service, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, relative to conservation assistance on private and public lands.

The purpose of this agreement is to adjust compliance requirements of the SLA to conditions that exist in Minnesota that could not be uniformly addressed at the national level; to facilitate Natural Resources Conservation Service conservation activities; and to comply with Federal and State laws and regulations pertaining to cultural resources.

The Minnesota Natural Resource Conservation Service (hereinafter called MN NRCS) and the Minnesota State Historic Preservation Office (hereinafter called MN SHPO) agree that execution of this Agreement provides for implementation of policies and procedures developed by the MN NRCS to more effectively assure that effects of conservation activities on cultural resources are thoroughly considered in the earliest planning stages and that cultural resource protection is accomplished as efficiently as possible.

**WHEREAS**, the United States Department of Agriculture, Natural Resources Conservation Service has entered into agreement entitled “Programmatic Agreement among the United States Department Of Agriculture, Natural Resources Conservation Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, relative to Conservation Assistance on Private and Public Lands” [dated May 31, 2002] (hereinafter referred to as Programmatic Agreement or PA); and

**WHEREAS**, the nationwide Programmatic Agreement (Exhibit 3) allows NRCS to comply programmatically with its obligations under Section 106 and 110 (f) of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) and requires Natural Resources Conservation Service to follow its policies and procedures for protecting cultural resources issued in the General Manual (GM) 420, Part 401 “Cultural Resources [Archeological and Historic Properties]” (Exhibit 4); and

**WHEREAS**, the Minnesota State Historic Preservation Officer administers the programs of the NHPA for Minnesota and is charged with assisting federal agencies through the maintenance and sharing of cultural resource inventory information and with preparation of a statewide historic preservation plan; and

**WHEREAS**, Stipulation 2.A. of the nationwide PA and Natural Resources Conservation Service’s GM 420 Part 401.33 encourage each state office and its counterpart SHPO to develop a SLA in order to further expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

**WHEREAS**, the State Conservationist for the MN NRCS has consulted with the MN State Historic Preservation Officer pursuant to GM 420 Part 401.33; and

**WHEREAS**, the definitions given in GM 420 Part 401.2 are applicable throughout this state level agreement;

**NOW, THEREFORE**, the MN NRCS and the MN SHPO agree to the following stipulations and will ensure that they are implemented:

## STIPULATIONS

### I COMMUNICATION

- A. For the purpose of modifications to the SLA, signing of the Memorandum of Agreement (MOA), and/or annual reporting; the MN NRCS State Conservationist will communicate directly with the MN SHPO State Historic Preservation Officer.
- B. For the purpose of developing or reviewing SLA procedures, preparing a MOA, or questions on MN NRCS cultural resources policy, assigned review and compliance MN SHPO staff will communicate with the MN NRCS Cultural Resources Specialist (CRS).
- C. For the purpose of project compliance activities, MN NRCS CRS will communicate directly with the MN SHPO review and compliance section for concurrence determinations of effect and eligibility. MN SHPO staff will respond directly to the CRS. MN SHPO response times will follow 36 CFR Part 800 regulations. No response after applicable response time will constitute MN SHPO concurrence in the CRS determinations. The MN SHPO will notify MN NRCS if more time is needed to respond on individual projects or if a more expedient review is needed on individual projects. MN NRCS and MN SHPO will try to accommodate special requests for additional/reduced review times when feasible.
- D. MN NRCS field office and field support office staffs will communicate directly with the CRS. Copies of all reporting forms, maps, and attachments will be sent to the CRS. The CRS will respond to the MN NRCS field office and field support offices either electronically or in writing. Copies of all compliance correspondence should be kept in the Producer's and CRS files.
- E. MN NRCS CRS will ensure that MN SHPO receives updated MN NRCS Conservation Practice Standards within 30 days of their addition to the MN NRCS Electronic Field Office Technical Guide (EFOTG).
- F. Whenever possible, MN NRCS and MN SHPO will utilize electronic mail to communicate to increase efficiency and provide improved cultural resources compliance and protection. However, all formal compliance correspondence and final reports will be submitted in hard copy with appropriate signatures by MN NRCS. All return correspondence from MN SHPO to MN NRCS will be hard copy with appropriate signatures by MN SHPO.
- G. Cultural resource and producer information is not subject to the Freedom of Information Act (FOIA). Section 304 of the NHPA and other Federal laws and program requirements may limit public access to information concerning a producer, an undertaking, and its effect on cultural resources. MN NRCS is providing MN SHPO cultural resource information for the expressed purposes of consultation under NHPA and 36 CFR Part 800. MN NRCS field offices and MN SHPO will limit access to MN NRCS producer information pursuant to Federal laws and regulations.

### II RESPONSIBILITIES

- A. MN NRCS State Conservationist is the responsible Federal Official for cultural resources compliance and the protection of cultural resources in all MN NRCS activities. The State Conservationist shall designate a qualified MN NRCS CRS to carry out the cultural resources program and will ensure that the state office staff has regular and continuing access to the CRS.
- B. MN NRCS District Conservationists (DC) are responsible for the implementation of MN NRCS cultural resources policies and procedures, and the compliance process outlined in this SLA.
- C. The CRS will oversee cultural resources identification, determinations of eligibility, and development of cultural resource treatment recommendations.
- D. All cultural resources work conducted by the CRS will meet the standards in the most current SHPO Manual for Archaeological Projects in Minnesota prepared by the MN SHPO.
- E. The CRS shall meet one or more of the Secretary of the Interior's standards for historic preservation personnel (archeologist, historian, architectural historian, or other historic preservation professional).
- F. The CRS shall be responsible for:
  - 1. Formulating state MN NRCS cultural resource guidance and procedures.

2. Determining and maintaining cultural resources training programs for field personnel acceptable to the MN NRCS and MN SHPO.
3. Assisting the MN NRCS State Conservationist and State Tribal Liaison in interacting with tribal governments in response to cultural resource issues.
4. Consulting with MN SHPO in discovery and urgent and compelling situations.
5. Preparing MN NRCS annual report to MN SHPO.

### **III CONSULTATION AND GEOGRAPHIC APPLICABILITY**

- A. MN NRCS will consult with the Tribal Historic Preservation Officer (THPO) on those reservations and dependent Indian communities where the Indian tribe has assumed the responsibilities of MN SHPO pursuant to 36 CFR Part 800.2 (c) (2) (i) (A). On reservations where the tribe has not assumed MN SHPO responsibilities, MN NRCS will consult with both a representative designated by the Indian tribe pursuant to 36 CFR Part 800.2 (c) (2) (i) (B) and with MN SHPO pursuant to this SLA. The MN NRCS will consult with Indian tribes regarding cultural resources, including traditional religious and cultural properties, located on ancestral, aboriginal, or ceded lands pursuant to 36 CFR Part 800.2 (c) (2) (ii).
- B. MN NRCS will seek and consider the view of the Indian tribe and the public in a manner that reflects the nature and complexity of the undertaking and its effects on cultural resource, also taking into account the confidentiality concerns of private individuals as defined in 36 CFR 800.2 (d).
- C. MN NRCS will continue to initiate consultation with THPO, Federally recognized tribes with land within the state, and non-resident tribes with interest in ancestral lands within the state boundaries to establish mutually acceptable Section 106 consultation protocols or agreements. When applicable, consultation will follow the consultation protocol guidelines set forth in the PA.

### **IV USE OF FIELD OFFICE PERSONNEL**

MN NRCS provides cultural resources training to NRCS field office personnel and conservation district staff that has professional expertise other than cultural resources. The cultural resources trained individuals may be used to carry out MN NRCS goals in cultural resource management efforts.

- A. They may act in the capacity of a crew member on surveys while under the direct supervision of the MN NRCS CRS.
- B. They may not formally record or evaluate sites for National Register of Historic Places (NRHP) eligibility. They may identify and locate sites, but only the CRS may record and evaluate them for the NRHP, and make determinations of effect.
- C. MN NRCS and conservation district personnel working on MN NRCS projects will not collect cultural resources (i.e., artifacts) located on private or public lands. Personnel may photograph relevant artifacts or features, or mark their locations for CRS examination.

### **V TRAINING**

- A. MN NRCS will integrate cultural resources conservation and education for producers and landowners into the planning and assistance process statewide.
- B. MN NRCS will offer cultural resources training to county conservation district personnel, Farm Service Agency personnel, Rural Development personnel, Tribal Government personnel, State Agencies, and personnel from other cooperating agencies or other groups. This training will occur when it is officially requested, when it will benefit and support MN NRCS's conservation mission, and when staff schedules allow. Stipulation IV on the use of field office personnel in this SLA only apply to applicable MN NRCS personnel and those county conservation district personnel acting on behalf of MN NRCS.

- C. MN NRCS will implement a training program to increase employee knowledge of cultural resources and their ability to recognize cultural resources including:
1. MN NRCS Field Office Personnel: MN NRCS will ensure that all personnel involved with practice implementation will receive and satisfactorily complete the MN NRCS National Modules 1-8 cultural resource training (ASK Level IV certification). Field Office Personnel are required to attend formal update training every three years. If a Field Office Personnel has not received update training in a three-year period, they will not maintain their ASK Level IV certification.
  2. MN NRCS CRS must have an advanced degree in archeology, architectural history, historical architecture or history and meet other academic and experience requirements for his/her discipline as found in *Archaeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines, Federal Register* 1983, Vol. 48, No. 190, pages 44738-44739. MN NRCS CRS will document that they have met the above requirements in a vita on file at MN SHPO.
- D. MN SHPO Training Responsibilities: When possible, MN SHPO will provide appropriate staff to assist in the development and presentation of MN NRCS training programs. MN SHPO will be provided an opportunity to review and comment on changes to training manuals and materials.

## VI NATIONAL EXEMPTIONS

This SLA acknowledges the appropriateness of, and implements Stipulation 3, National Exemptions as found in the Programmatic Agreement (EXHIBIT 2).

## VII MINNESOTA PRACTICES EXEMPTED FROM CASE-BY-CASE REVIEW

Exhibit 1 of this SLA identifies:

- MN NRCS practices and/or programs exempted from case-by-case review, as appropriate to the cultural, historical, and ecological conditions within Minnesota because they are a type of activity with foreseeable effects that are minimal or not adverse to cultural resources eligible for listing in the NRHP.
- Those practices considered undertakings and presumed to have the potential to impact cultural resources.
- Those undertakings that are exempt from MN SHPO review and subject only to MN NRCS CRS review.

## VIII COMPLIANCE ACTIVITIES AND DOCUMENTATION

- A. MN NRCS field office personnel will determine if conservation activities are subject to MN SHPO review based on Stipulation VII (National Exemptions) and EXHIBIT 1 of this SLA.
1. If not subject to review by MN SHPO, the DC will document this decision at the field office level and proceed with the activity.
  2. If the activity is subject to review by MN SHPO or NRCS CRS (considered an undertaking), MN NRCS field office personnel will provide the following information (as specified on the Cultural Resource Review Request Form, EXHIBIT 2) directly to the MN NRCS CRS in St. Paul, MN to assist in the determination for further work on MN NRCS undertakings:
    - a. Locational data, including county, township, range, section and quarter section.
    - b. Labeled photocopy of a section of the appropriate USGS 7.5-minute quadrangle map with the practice location or project area where ground disturbance will occur delineated or highlighted, aerial photographs depicting in detail where the conservation practice(s) will be implemented.
    - c. Current land use.
    - d. Corresponding MN NRCS Program.

- e. Detailed descriptions of ground disturbing activity, including location of borrow areas.
- f. Total area of ground to be disturbed.
- g. All projects exempt from MN SHPO review (as indicated in EXHIBIT 1), will be reviewed by the MN NRCS CRS who will make a recommendation of either No Survey or Survey Required. If No Survey is recommended, the CRS will retain the Review Request form and notify the NRCS DC of the decision and give notice to proceed. If a survey is recommended, the CRS will perform the survey. If the survey is negative, the NRCS DC will be informed of the result and given authorization to proceed. If a survey is performed to evaluate a previously recorded site present in a project area, or if a new site is recorded during a survey, a formal survey report and evaluation will be submitted to MN SHPO for review and comment.
- h. For all other projects subject to MN SHPO review the MN NRCS CRS will review the information submitted by field office personnel and make a survey recommendation. Projects considered as not requiring a survey will be submitted to the MN SHPO for review and concurrence on a monthly or bi-weekly basis, when possible. If a survey is recommended by the MN NRCS CRS, the CRS will perform the survey then submit a formal report to MN SHPO for review and will consult on a project-by-project basis with MN SHPO and other relevant parties.
- i. After the MN NRCS CRS receives MN SHPO concurrence, or the review period has elapsed, the CRS will supply the DC with written notice (i.e., copy of report and MN SHPO response) that they may proceed with the implementation of the conservation practice. The DC will file all compliance documentation in the producer's file. The CRS will file all compliance documentation in their county files.

## **IX PLANNING**

- A. MN NRCS will conduct cultural resources reviews, inventory, and evaluation (if applicable) in the earliest possible stages of their planning processes.
- B. In consultation with MN SHPO, MN NRCS will work to develop standardized inventory, evaluation and mitigation processes. These processes will specify criteria for implementation. Accepted processes can be implemented by MN NRCS as defined in each practice standard.

## **X POST REVIEW DISCOVERIES**

- A. MN NRCS will follow 36 CFR 800.13 for all post-review discoveries. This includes when cultural resources are discovered or unanticipated effects on cultural resources are found before or after MN NRCS has completed the section 106 process.
- B. MN NRCS DC will inform producers of discovery procedures in writing. In a discovery situation during MN NRCS administered undertakings:
  - 1. All work shall cease and MN NRCS personnel will immediately notify the producer and the MN NRCS CRS. The CRS will notify the MN NRCS State Conservationist and the MN SHPO within 48 hours.
  - 2. The MN NRCS CRS will evaluate the discovery for the NRHP eligibility, determine potential effects and treatment options, and consult with MN SHPO for their concurrence in treatment.
  - 3. In the case of adverse effects to cultural resources, the MN NRCS State Conservationist and MN NRCS CRS will notify and consult with MN SHPO, ACHP, and other affected parties (if necessary).
- C. If the discovery includes human remains, consultation will be carried out in accordance with Stipulation XI.

## **XI HUMAN REMAINS**

All undertakings involving human remains on private property are subject to the Private Cemeteries Act (Minnesota Stat. Ann. 307.08) and possibly the Native American Graves Protection and Repatriation Act

(NAGPRA). If human remains are discovered on private property, MN NRCS will cease all work, protect the human remains in place, and notify the MN NRCS CRS and the appropriate MN NRCS Assistant State Conservationist for Field Operations within five hours of discovery.

## **XII CURATION**

MN NRCS conducts most of its undertakings on private land. Therefore, all artifacts found during cultural resource activities on private land shall remain in the ownership of the landowner. Curation is the responsibility of the landowner as stated in MN NRCS GM 420 Part 401.35. If materials are recovered during the course of an MN NRCS sponsored or assisted survey or data recovery effort, the MN NRCS will ensure that appropriate analysis of all recovered materials are completed before returning them to the owners. Associated records that are prepared or assembled in connection with a MN NRCS conducted cultural resources survey, excavation or other study, regardless of the location of the resource, become property of the MN NRCS.

When archeological material or historic material remains are recovered during the course of MN NRCS activities on federal, tribal, state, municipal or other public lands, recovered materials are the property of the agency or group having jurisdiction over those lands. When such materials are recovered from lands administered by a state or municipal agency or other public entity, the recovered materials are the property of that agency or entity as stated in MN NRCS GM 420 Part 401.35.

## **XIII EMERGENCIES**

The following procedures will be implemented during an emergency declared by the President of the United States, the Governor of Minnesota, a tribal official on a reservation, the MN NRCS State Conservationist, or other authorized individual, in accord with 36 CFR 800.12 and as outlined in the NRCS National Watershed Manual, Part 509, Emergency Watershed Protection and in Exhibit 5. These procedures will ensure that the need to protect life and property is accomplished while taking cultural resources into account to the maximum extent congruent with rapidly changing priorities and circumstances. These emergency situations are of two types, with separate compliance processes.

- A. Normal Emergency Activities include those declared by the MN NRCS State Conservationist, Tribal Government, Governor of Minnesota or President of the United States. During Normal Emergency Activities MN NRCS CRS will make decisions for treatments to cultural resources in consultation with MN SHPO. Conservation practices required in these areas will be inventoried or monitored. MN SHPO will have seven days to review MN NRCS reports in these situations instead of the regular 30 days as defined in 36 CFR 800.12 (b) (2).
- B. Urgent and Compelling Situations require that work be initiated within five days to save life or property. Regarding these situations, 36 CFR 800.12 (d) states, "Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 and this part." In these declared disaster situations, MN NRCS shall proceed with the undertaking and MN NRCS CRS shall notify MN SHPO as soon as possible after the situation has been identified and accepted as urgent and compelling. The waiver may be invoked in only a limited range of circumstances involving major natural disaster or imminent threat to life or property. Notification should include a description of the circumstances creating the urgent and compelling situation, work to be undertaken, geographic area to which the waiver applies, and any consideration of cultural resources already completed or planned to be completed. MN NRCS CRS will be responsible to document and avoid adverse effects to cultural resources encountered during urgent and compelling work to the fullest extent practical.
- C. In these emergency situations MN NRCS CRS may elect to waive all or part of MN NRCS cultural resources responsibilities as allowed under 36 CFR 800.12 (d). The CRS will notify MN SHPO of disaster waiver situations in writing, including an outline of MN NRCS plans to consider potential adverse effects to cultural resources and appropriate treatments.

#### **XIV ANNUAL REPORTING AND REVIEW**

- A. MN NRCS will provide an annual report to MN SHPO summarizing fiscal year (October 1-September 30) Section 106 compliance activities and results. The annual report will include a table or database files listing the county, legal description, total acres surveyed, number of undertakings reviewed, number of undertakings that underwent a field survey, and the results of the surveys. The annual report will be sent to MN SHPO no later than March 31 of the following year.
- B. MN NRCS and MN SHPO will consult annually regarding the performance of this agreement.

#### **XV ISSUE RESOLUTION PROCEDURE**

If disagreement occurs between MN NRCS and MN SHPO on a specific project, a team will be established to resolve the disagreement. At a minimum, this team, under the leadership of the MN NRCS DC, shall consist of MN NRCS CRS, MN SHPO, and property owners or other concerned parties identified by MN NRCS or MN SHPO. If resolution of a disagreement cannot be reached after two meetings, the disagreement will be resolved through the following MN NRCS policy: "If conflicts over acceptable treatment or mitigation cannot be resolved to the satisfaction of all concerned parties, MN NRCS will determine if continued assistance is warranted after completing appropriate Section 106 compliance requirements of this part." This statement refers to the continued technical or financial assistance by MN NRCS to the landowner or operator. If the MN NRCS State Conservationist and MN SHPO State Preservation Officer cannot agree on resolution of a disagreement; the NRCS Chief or delegated representative shall make a final determination in consultation with ACHP and the Secretary of the Interior.

#### **XVI AMENDMENT OF STATE LEVEL AGREEMENT**

This SLA may be amended upon the request of either party. The parties will consult as needed to consider such amendments.

#### **XVII TERMINATION OF STATE LEVEL AGREEMENT**

Either party to this SLA may terminate it by providing sixty (60) days written notice to the other, provided that they consult prior to termination to seek agreement on amendment or other actions that would avoid termination. If terminated, MN NRCS will comply with the Programmatic Agreement among the United States Department of Agriculture, Natural Resources Conservation Service, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, relative to conservation assistance on private and public lands, or if this does not exist will revert to compliance under 36 CFR Part 800. This agreement will terminate five years after the last signatory signs the present document. At any time on the six-month period prior to the expiration of this agreement, the MN SHPO and MN NRCS can agree to extend this agreement with or without amendments.

USDA-Natural Resources Conservation Service

By: \_\_\_\_\_  
William Hunt  
State Conservationist

Date: \_\_\_\_\_

State Historic Preservation Office

By: \_\_\_\_\_  
Nina M. Archabal  
MN State Historic Preservation Officer

Date: \_\_\_\_\_